

Rick L. Hoffman
FEDERAL DEFENDERS OF EASTERN WASHINGTON AND IDAHO
306 East Chestnut Avenue
Yakima, Washington 98901
(509) 248-8920

Attorneys for Defendant
ROBERT JOHN KEARNS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CR-13-6005-EFS
)	
vs.)	DEFENDANT'S
)	SENTENCING MEMORANDUM
ROBERT JOHN KEARNS,)	
)	
Defendant.)	

TO: MICHAEL C. ORMSBY, UNITED STATES ATTORNEY
STEPHANIE J. LISTER, ASSISTANT UNITED STATES ATTORNEY

ROBERT JOHN KEARNS, by and through his attorney, RICK L.
HOFFMAN of the Federal Defenders of Eastern Washington and Idaho,
hereby submits the following sentencing memorandum:

I. Status of the Case

On February 6, 2013, an indictment was filed against Mr. Kearns
charging him with one count of Attempted Production of Child Pornography,
in violation of 18 U.S.C. § 2251(a),(e). After his arrest in the Western
District of Washington on February 11, 2013, Mr. Kearns appeared before

DEFENDANT'S
SENTENCING MEMORANDUM

1 this Court on March 15, 2013, and was arraigned on the indictment. A not
2 guilty plea was entered and Mr. Kearns remained in custody. A detention
3 hearing was held on March 20, 2013, at which time Mr. Kearns was released
4 on pretrial supervision and he has remained out of custody during the
5 pendency of this matter, residing at his home in Puyallup, Washington. An
6 Information Superseding Indictment was filed against Mr. Kearns on
7 November 19, 2013, charging him with Receipt of Child Pornography, in
8 violation of 18 U.S.C. § 2252A(a)(2). Mr. Kearns waived indictment by a
9 grand jury and on that day, entered a guilty plea to the superseding charge,
10 with the benefit of a written plea agreement pursuant to Fed. R. Crim. Proc.
11 11(c)(1)(C). Sentencing is scheduled for Tuesday, February 11, 2014, at 2:30
12 p.m., before the Honorable Edward F. Shea, in Richland, Washington.

15 **II. Objections to Presentence Investigation Report**

16 Mr. Kearns has no objections to the presentence report or the
17 sentencing guideline calculation.

18 **III. Sentencing Calculations**

19 Mr. Kearns agrees with the presentence investigation report that the
20 total offense level is 27, his criminal history category is I and the sentencing
21 range is 70 to 87 months.
22

1 **IV. Sentencing Factors under 18 U.S.C. § 3553(a)**

2 In imposing a sentence, the Court must consider the following factors
3 under 18 U.S.C. § 3553(a):

- 4 (1) the nature and circumstances of the offense and the history and
5 characteristics of the defendant;
6
7 (2) the need for the sentence imposed –
8 (A) to reflect the seriousness of the offense, to promote respect for
9 the law, and to provide just punishment for the offense;
10 (B) to afford adequate deterrence to criminal conduct;
11 (C) to protect the public from further crimes of the defendant; and
12 (D) to provide the defendant with needed educational or vocational
13 training, medical care, or other correctional treatment in the
14 most effective manner;
15
16 (3) the kinds of sentences available;
17 (4) the advisory guideline range;
18 (5) any pertinent policy statements issued by the Sentencing
19 Commission;
20
21 (6) the need to avoid unwarranted sentencing disparities;
22 (7) the need to provide restitution.

1 After an accurate calculation of the sentencing guideline range, the
2 statute suggests a full examination of the factors to be considered in arriving
3 at a proper sentence. The court should initially consider the nature and
4 circumstances of this offense and of Mr. Kearns, followed by the availability
5 of particular sentences and the advisory guideline range.
6

7 1. **The nature and circumstances of the offense and history and**
8 **characteristics of the defendant.**

9 This charge is a serious matter and impacts the sensitivities and
10 emotions of individuals and society in numerous and immeasurable ways.
11 Victimization of the young and vulnerable amongst us is inexcusable. While
12 the actions of those involved in this matter cannot be accepted, Mr. Kearns
13 did not actively participate in the production of any images or videos and
14 only was supplied with four images. It appears that with or without the
15 involvement of Mr. Kearns, which did not involve pressure or coercion from
16 Mr. Kearns or inducement or threats directed toward Ms. Ortega, the
17 criminal acts of Ms. Ortega molesting her daughter would have occurred
18 nonetheless.
19
20

21 With the exception of this matter, Mr. Kearns has led a normal,
22 admirable life. He has a family with whom he is close, although divorced
23

1 from his first wife, they remain close and supportive of each other, he has
2 been involved in his son's life, emotionally, morally and financially, he has no
3 problems with alcohol or drug use and he has no criminal history. Running
4 parallel with his public life, however, was a private side of Mr. Kearns
5 wherein he became involved with computer chat rooms primarily involving
6 fantasy sex contacts. Mr. Kearns did not specifically attempt to cause or
7 induce others to engage in various sexual activities, but he quickly became
8 aware that many individuals involved in these chat rooms had their own
9 idiosyncrasies or predilections, which he did not discourage. To have others
10 continue their contacts with him and his own exhibition of his desires, Mr.
11 Kearns encouraged others in their desires. Inexcusably, some of this
12 encouragement delved into the world of unacceptable behavior.
13
14

15 2. **The need to protect the public.**

16 Mr. Kearns' crime is of concern to this court and the public. Mr.
17 Kearns accepts his fate. He understands how his actions got him involved in
18 the situation in which he now finds himself and he will not engage in such
19 conduct in the future. Clearly, Mr. Kearns is not a danger to the public and
20 will not be in the future
21

22 3. **The need for deterrence.**

1 This court must not only consider the need to deter Mr. Kearns from
2 committing future crimes but should also consider the impact of a sentence
3 herein on others in the community. A sentence of incarceration as proposed
4 will be viewed as a just result by the public and will sufficiently achieve the
5 goals of deterring members of the public.
6

7 4. **The need for the sentence imposed to provide the defendant**
8 **with training, care or treatment in the most effective manner.**

9 Mr. Kearns does not appear to be in need of training or treatment.

10 5. **The kinds of sentences available.**

11 Incarceration is the only available sentence in this matter.
12

13 6. **The advisory sentencing guidelines.**

14 The advisory sentencing guideline range is 70 to 87 months, with a
15 mandatory minimum of 5 years. The recommendation of the parties as set
16 forth in the plea agreement, pursuant to Fed. R. Crim. Proc. 11(c)(1)(C), is 10
17 years.
18

19 **V. CONCLUSION**

20 This Court is required to impose a sentence in this matter that is
21 sufficient but not greater than necessary to carry out the goals of sentencing.
22 18 U.S.C. § 3553. Based upon the circumstances of this charge and the
23

1 factors enumerated in 18 U.S.C. § 3553(a), along with the plea agreement
2 pursuant to Fed. R. Crim .Proc. 11(c)(1)(C), Mr. Kearns requests that the
3 Court impose a sentence of 10 years.

4 Dated: January 21, 2014.

5
6 Respectfully submitted,

7 s/Rick L. Hoffman

8 Rick L. Hoffman, 9478

9 Attorney for ROBERT JOHN KEARNS

10 Federal Defenders of Eastern

11 Washington and Idaho

12 306 East Chestnut Avenue

13 Yakima, Washington 98901

14 (509) 248-8920

15 (509) 248-9118 fax

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CERTIFICATE OF SERVICE

16 I hereby certify that on January 21, 2014, I electronically filed the
17 Defendant's Sentencing Memorandum with the Clerk of the Court using the
18 CM/ECF System which will send notification of such filing to the following:
19 Stephanie J. Lister, Assistant United States Attorney.

21 s/Rick L. Hoffman

22 Rick L. Hoffman, WA 9478